

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of )
COUNTY OF MONMOUTH, NEW JERSEY ) File Nos. 0003710492 and 0003395374
Request For Waiver to Operate a Trunked Public )
Safety Communications System Using )
Frequencies in the Television Channel 19 (500- )
506 MHz) Band )

ORDER

Adopted: June 3, 2010

Released: June 3, 2010

By the Chief, Policy Division, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. The County of Monmouth, New Jersey (Monmouth or the County), filed two applications and a request for waiver to use ten frequency pairs in the television (TV) Channel 19 band (500-506 MHz) for public safety communications.1 Monmouth seeks a waiver pursuant to Section 337(c) of the Communications Act of 1934, as amended (the Act),2 or, alternatively, Section 1.925 of the Commission’s rules.3 As further detailed below, we find that Monmouth has failed to meet the criteria for a waiver pursuant to Section 337(c) of the Act. We nonetheless find that Monmouth has satisfied the requisite showing to warrant a waiver pursuant to Section 1.925 of the rules. Accordingly, we grant Monmouth’s waiver request subject to the conditions specified herein.

II. BACKGROUND

2. Monmouth is currently authorized on eight frequency pairs in the TV Channel 20 band (506-512 MHz) under call sign WQGU308.4 The County’s leadership “conducted a comprehensive review of current communications capabilities ... based on indicated known deficiencies, with wide variance among municipal agencies and the heightened responsibility to improve emergency response.”5 The County reports that “[c]ommunications are strained by poor or no coverage, antiquated equipment and inadequate capacity,” and “[d]ivergent spectrum resources exist among the police, fire and

1 See File Nos. 0003710492 (filed January 25, 2009 and amended May 29, 2009) and 0003395374 (filed January 25, 2009, amended March 18, 2008, and May 29, 2009) and attached “Applications and Waiver Request of Monmouth County, New Jersey Under Section 337(c) of the Communications Act of 1934, as Amended and Section 1.925 of the Commission’s Rules” (dated December 30, 2008) (Waiver Request).

2 47 U.S.C. § 337(c).

3 47 C.F.R. § 1.925.

4 See license for Station WQGU308. The license contains one repeater site located within fifty miles of Philadelphia, Pennsylvania, where the TV Channel 20 band is allocated for private land mobile radio service use. See 47 C.F.R. §§ 90.303, 90.305(a).

5 Waiver Request at 2-3.

emergency medical agencies across county and municipal agencies.”<sup>6</sup> In an effort to “undertake a radio system redesign of all public safety communications within the County,” which “will require additional spectrum,” Monmouth’s technical consultant “conducted an extensive search of all existing land mobile bands applicable for use by public safety in Monmouth County” and determined that “there are no channels available.”<sup>7</sup> Monmouth’s Frequency Advisor, the Association of Public Safety Communications Officials, International (APCO) for the State of New Jersey, confirmed that “there are no available part 90 channels available for use by Monmouth County.”<sup>8</sup>

3. Monmouth asserts that “[a]ccess to the proposed UHF channels will improve regional interoperability and afford opportunity where none existed before.”<sup>9</sup> The County states that such access “will allow the County and its municipalities to join State and regional interoperability pacts, which are predominantly in the UHF band,” including “the Urban Area Security Initiative (UASI) that encompasses New Jersey municipal agencies.”<sup>10</sup>

4. In reviewing the availability of UHF channels, Monmouth observes that “different parts of the County geographically lie within the New York 50 mile radius and the Philadelphia 50 mile radius defined by Subpart L of Part 90 of the Commission’s rules.”<sup>11</sup> Monmouth notes, “[t]he New York area 50 mile radius encompasses the largest portion of the County, while the Philadelphia radius “encompasses approximately 28% of the County.”<sup>12</sup> Monmouth indicates that “there are frequencies within TV channel 19 that can be used throughout Monmouth County without causing harmful interference to any TV transmissions ...”<sup>13</sup> While the Commission’s rules allocate TV Channel 19 to the private land mobile radio service (PLMRS), the rules authorize base stations using this spectrum only within 80 kilometers (50 miles) of the geographic center of Philadelphia, Pennsylvania.<sup>14</sup> To use this spectrum outside of the Philadelphia 80-kilometer radius, Monmouth would require a waiver of Sections 90.303 and 90.305(a) of the Commission’s rules because “Monmouth County proposes to conduct operations that extend [beyond] the Philadelphia [50-mile] radius by approximately 18.9 miles at the farthest point.”<sup>15</sup>

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<sup>6</sup> *Id.* at 3.

<sup>7</sup> See File Nos. 0003710492 and 0003395374, attached Frequency Availability Study and Analysis of the Use of TV Channel 19 in Monmouth County, New Jersey, for Public Safety Wireless Communications (dated November 2008) (Analysis) at 1-2.

<sup>8</sup> See *id.*, attached Letter from Lieutenant Anthony Melia, APCO New Jersey Frequency Advisor, to Undersheriff Shaun Golden, Monmouth County Sheriff’s Office (dated July 1, 2008).

<sup>9</sup> Waiver Request at 4.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 3. See 47 C.F.R. §§ 90.303, 90.305(a).

<sup>12</sup> Waiver Request at 3.

<sup>13</sup> *Id.* at 3-4. TV Channel 19 is allocated for private land mobile radio service use in the Philadelphia, Pennsylvania urbanized area. See 47 C.F.R. § 90.303.

<sup>14</sup> See 47 C.F.R. §§ 2.106, 90.303, 90.305(a).

<sup>15</sup> Waiver Request at 13. We note that only File No. 0003710492 contains sites located outside the Philadelphia fifty-mile area. File No. 0003395374 would not require a waiver of Sections 90.303 and 90.305(a) because its sites are located within the Philadelphia fifty-mile area. However, Monmouth attached the same Waiver Request to the latter application, presumably because it is affected by Monmouth’s request for waiver of Section 90.307, as described *infra*.

5. Monmouth states that its “use of channel 19 is consistent with incumbent land mobile operations in these markets and presents no additional challenges to co channel or adjacent broadcast operations.”<sup>16</sup> Because Monmouth proposes to operate in areas of the County that will be less than 90 miles from TV Channel 18 Station WMBC-DT, Montclair, New Jersey, it requests waiver of Sections 90.307(a), (c) and (d).<sup>17</sup> On May 15, 2009, Monmouth entered into an agreement with Mountain Broadcasting Corporation (Mountain), licensee of Station WMBC-DT, where in exchange for Mountain’s concurrence, the County will “minimize transmissions toward WMBC-DT broadcast operations.”<sup>18</sup> Monmouth agrees to several non-interference conditions and agrees to accept all interference from Station WMBC-DT.<sup>19</sup>

6. On December 7, 2009, the Public Safety and Homeland Security Bureau (Bureau) placed Monmouth’s waiver request and associated applications on public notice.<sup>20</sup> As a part of the analysis under Section 337(c) of the Act, as well as the Commission’s waiver criteria, we also sought comment on whether the 700 MHz public safety band would provide a viable alternative, particularly since the June 12, 2009, digital television transition date has passed, and in light of the Commission’s actions to facilitate a nationwide, interoperable public safety broadband network.<sup>21</sup> The Bureau requested comment on the effect on television broadcasters of decreasing the potentially available spectrum for their use in Monmouth County and in the areas beyond Monmouth where they would be unable to use TV Channel 19 for television broadcast service as a result of the County’s proposed use of frequencies in the TV Channel 19 band for public safety.<sup>22</sup> The Bureau also sought comment on whether Monmouth County could complete its proposed upgrade and improve interoperability by using frequencies in the 700 MHz public safety band, rather than using the television T band frequencies.<sup>23</sup> The Bureau noted that Monmouth holds several licenses that are currently operating in wideband mode and asked commenters whether the Commission should consider the applicant’s current progress in narrowbanding when determining whether or not the public interest supports assigning non-public safety spectrum to a public safety entity.<sup>24</sup> No parties opposed the waiver request. Motorola, Inc. and the Township of Middletown, New Jersey’s Chief of Police filed comments in support of the County’s applications and waiver.<sup>25</sup> Monmouth filed reply comments.<sup>26</sup>

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<sup>16</sup> *Id.* at 10.

<sup>17</sup> *See id.* at 6. *See* 47 C.F.R. § 90.307.

<sup>18</sup> *See* Nos. 0003710492 and 0003395374, attached Agreement Between the County of Monmouth, New Jersey and Mountain Broadcasting Corporation, dated May 15, 2009 (Monmouth-Mountain Agreement).

<sup>19</sup> *See id.* at 2.

<sup>20</sup> *See* Public Safety and Homeland Security Bureau Seeks Comment on Request for Waiver Filed by the County of Monmouth, New Jersey to Operate a Trunked Public Safety Radio System Using Frequencies in the Television Channel 19 Band (500-506 MHz), *Public Notice*, 24 FCC Rcd 14375 (PSHSB 2009) (*Public Notice*).

<sup>21</sup> *See id.* at 3.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> Comments of Motorola, Inc., filed December 28, 2009 (Motorola Comments); Letter from Robert Oches, Chief of Police, Township of Middletown, New Jersey, to Marlene H. Dortch, Secretary, Federal Communications Commission, dated January 8, 2010.

<sup>26</sup> Reply Comment of Monmouth County, filed January 7, 2010 (Monmouth Reply Comments).

7. With regard to the effect on television broadcasters, Monmouth asserts that its proposal “is eclipsed by the historic sharing of land mobile services of channel 19 in the New York Metropolitan area with the broadcast spectrum.”<sup>27</sup> Monmouth notes that “there are 529 licensed land mobile transmitters in the TV channel 19 band that are found in the Commission’s Universal Licensing System data base in the Monmouth County, Northern New Jersey and New York metropolitan area.”<sup>28</sup> As a result, Monmouth argues that its proposed operations would be “a *de minimis* addition to the current [TV Channel 19] environment.”<sup>29</sup> Regarding narrowbanding, Monmouth “embraces the Commission’s 12.5 kHz mandate and the transition rules to provide licensees opportunity to plan the shift from wideband technologies.”<sup>30</sup> Monmouth County states that “an important objective is to move all County agencies to this [12.5 kHz] technology and to provide an incentive for municipal agencies to do so by joining the regional system.”<sup>31</sup> The County states that “[the] proposed infrastructure will be designed and deployed to transition to further efficiencies (6.25 kHz) through software upgrade.”<sup>32</sup>

### III. DISCUSSION

8. Section 337(c) of the Act provides that the Commission “shall waive . . . its regulations implementing th[e] Act (other than its regulations regarding harmful interference) to the extent necessary to permit” entities “seeking to provide public safety services” to use unassigned spectrum not allocated to public safety if the Commission makes five specific findings: (i) no other spectrum allocated to public safety services is immediately available to satisfy the requested public safety service use; (ii) the requested use is technically feasible without causing harmful interference to other spectrum users entitled to protection from such interference under the Commission’s regulations; (iii) the use of the unassigned frequency for the provision of public safety services is consistent with other allocations for the provision of such services in the geographic area for which the application is made; (iv) the unassigned frequency was allocated for its present use not less than two years prior to the date on which the application is granted; and (v) granting such application is consistent with the public interest.<sup>33</sup>

9. When considering waiver requests filed pursuant to Section 337(c) of the Act, we must first determine whether the applicant is an “entity seeking to provide public safety services.”<sup>34</sup> The Act defines public safety services as “services – (A) the sole or principal purpose of which is to protect the safety of life, health, or property; (B) that are provided – (i) by State or local government entities; or (ii) by non-governmental organizations that are authorized by a governmental entity whose primary mission is the provision of such services; and (C) that are not made commercially available to the public by the provider.”<sup>35</sup> Monmouth, a local government entity, states that “[t]he County’s public safety and emergency service resources include the Sheriff, Prosecutor and Office of Emergency Management.”<sup>36</sup>

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<sup>27</sup> *Id.* at 3.

<sup>28</sup> *Id.* citing Analysis at 6-9.

<sup>29</sup> Monmouth Reply Comments at 3.

<sup>30</sup> *Id.* at 5.

<sup>31</sup> *Id.* at 5.

<sup>32</sup> *Id.* at 5.

<sup>33</sup> 47 U.S.C. § 337(c).

<sup>34</sup> *See* 47 U.S.C. § 337(f).

<sup>35</sup> *Id.*

<sup>36</sup> Waiver Request at 2.

Further, Monmouth “serves as the New Jersey State Regional Communications Center for Monmouth, Ocean, Atlantic and Cape May Counties” and “provides the backup public safety answering point (PSAP) to Newark, Essex County, New Jersey’s largest urban area.”<sup>37</sup> Based on the information before us, we find that Monmouth is an entity that provides public safety services as defined by the statute.

10. Next, we consider whether Monmouth’s petition satisfies the specific showing requirements mandated by Section 337(c) of the Act. We note that an applicant’s failure to meet any one of the five criteria constitutes sufficient cause for the Commission to deny a request for waiver under Section 337(c).<sup>38</sup>

11. We find that Monmouth has not demonstrated that “no other spectrum allocated to public safety services is immediately available to satisfy the requested public safety service use,” pursuant to subsection 337(c)(1)(A) of the Act.<sup>39</sup> Since Monmouth first filed its applications on April 9, 2008, broadcasters have vacated the 700 MHz band as a result of the June 12, 2009 conclusion of the DTV transition. In addition, the Region 8 700 MHz Plan, which includes provisions for Monmouth, is approved by the Commission.<sup>40</sup> In its Reply Comments, Monmouth notes that the “Region 8 700 MHz plan provides public agencies within Monmouth County seven 25 kHz channels,”<sup>41</sup> and that “[t]wo slot [TDMA] format can be pursued but will only afford Monmouth County 14 channels.”<sup>42</sup> However, “[t]he County has determined that at least 20 frequencies are needed.”<sup>43</sup> Monmouth argues that “[i]ntegrating UHF frequencies with 700 MHz into one system presents technical challenges beyond reasonable cost parameters; Monmouth County is aware of no manufacturer offering such a solution.”<sup>44</sup> In other words, technical issues would prevent 700 MHz channels from being integrated with Monmouth’s current UHF infrastructure into one system.

12. Despite Monmouth’s frequency band preference for UHF, Section 337 of the Act compels us to consider the 700 MHz band public safety channels to be immediately available and ready for assignment.<sup>45</sup> Although it appears that the Region 8 700 MHz Plan does not offer sufficient capacity for all of Monmouth’s proposed operations, Monmouth appears not to have considered whether it could

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<sup>37</sup> *Id.*

<sup>38</sup> See South Bay Regional Public Communications Authority, *Memorandum Opinion and Order*, 13 FCC Rcd 23781, 23796 ¶ 33 (1998); Township of Cinnaminson, New Jersey, *Order*, 22 FCC Rcd 4583, 4585 ¶ 6 (PSHSB 2007), *citing* University of Southern California, *Memorandum Opinion and Order*, 16 FCC Rcd 2978, 2984 ¶ 15 (WTB PSPWD 2001). See also Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as amended, *Report and Order and Further Notice of Proposed Rulemaking*, WT Docket No. 99-87, 15 FCC Rcd 22709, 22768-69 ¶ 131 (2000).

<sup>39</sup> 47 U.S.C. § 337(c)(1)(A).

<sup>40</sup> See Public Safety and Homeland Security Bureau Approves Region 8 700 MHz Plan, WT Docket No. 02-378, *Public Notice*, 24 FCC Rcd 5317 (PSHSB 2009).

<sup>41</sup> Monmouth Reply Comments at 4.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* The instant applications seek 20 frequencies, or 10 frequency pairs, from the TV Channel 19 band.

<sup>44</sup> Monmouth Reply Comments at 4.

<sup>45</sup> See, e.g., County of Los Angeles, California, *Order*, 23 FCC Rcd 18389, 18398 ¶ 19 (PSHSB 2008) (disagreeing with NPSTC’s assertion that the 700 MHz band should be considered after the DTV transition date) (*LA County Order*).

access a portion of the 2.4 megahertz of spectrum from the New Jersey 700 MHz State License,<sup>46</sup> which potentially could provide the extra capacity to meet Monmouth's spectrum needs.

13. The Commission has previously apprised Section 337 applicants that "the statute requires that there be no unassigned public safety spectrum, or not enough for the proposed public safety use, in any band in the geographic area in which the Section 337 applicant seeks to provide public safety services."<sup>47</sup> Consistent with the Commission's position, the Bureau and the Wireless Telecommunications Bureau have rejected the argument that an applicant must only show either the unavailability of frequencies in its preferred public safety band or, conversely, the unsuitability of frequencies in other public safety bands, for purposes of satisfying Section 337(c) of the Act.<sup>48</sup> Based on the facts before us, we cannot find that no public safety spectrum is immediately available to satisfy the requested public safety service use. Because Monmouth has failed to satisfy one of the five criteria under 337, specifically, that "no other spectrum allocated to public safety services is immediately available to satisfy the requested public safety service use," we need not address its arguments regarding the remaining four criteria of Section 337 of the Act.<sup>49</sup>

14. However, our finding that Monmouth does not warrant waiver relief pursuant to Section 337 of the Act does not foreclose our consideration of Monmouth's alternative request for waiver relief pursuant to Section 1.925 of the Commission's rules.<sup>50</sup> The ability of the Commission to waive its rules stems from the Commission's plenary authority under the Act to take the actions necessary to achieve the Commission's over-arching statutory purposes, which include "promoting safety of life and property through the use of radio communication."<sup>51</sup> Section 1.925 provides the Commission the necessary flexibility to achieve its statutory objective of safeguarding life and property by considering an applicant's request for waiver relief according to the standards that an applicant must meet under the rule.<sup>52</sup> We find

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<sup>46</sup> See call sign WPTZ794. See also *LA County Order* at 18399 ¶ 20 (taking into account the California 700 MHz State License in the 700 MHz capacity analysis for County of Los Angeles).

<sup>47</sup> In the Matter of Implementation of Sections 309(j) and 337 of the Communications Act of 1934, as amended, WT Docket No. 99-87, *Report and Order and Further Notice of Proposed Rule Making*, 15 FCC Rcd 22709, 22769 ¶ 132 (2000) (*Balanced Budget Act Report and Order*) (footnotes omitted); see also H.R. Conf. Rep. No. 105-217, 105th Cong., 1st Sess., at 579-80 (1997) ("Conference Report") ("spectrum must not be immediately available on a frequency already allocated to public safety services.").

<sup>48</sup> See *County of Marin, California, Order*, 22 FCC Rcd 9165, 9167-68 ¶ 6 (PSHSB PD 2007); *State of Ohio, Memorandum Opinion and Order*, 17 FCC Rcd 439, 446-47 ¶ 15 (WTB PSPWD 2002); *State of Tennessee Department of Transportation, Order on Reconsideration*, 15 FCC Rcd 24645, 24648-49 ¶ 9 (WTB 2000).

<sup>49</sup> See, e.g., *Hennepin County, Order*, 14 FCC Rcd 19418 (WTB 1999) (having noted failure of Hennepin County to meet one of the criteria, Bureau did not address remainder); *New Hampshire Department of Transportation (NHDOT), Memorandum Opinion and Order*, 14 FCC Rcd 19438, 19442 (WTB 1999) (after having determined that New Hampshire failed to demonstrate that no other spectrum allocated to public safety service was immediately available, Bureau noted that it "need not address whether NHDOT has submitted evidence that would allow us to make the other findings required by Section 337(c)(1) of the Act.").

<sup>50</sup> See *Ocean County, New Jersey, Order*, DA 09-1976 (PSHSB PD) (rel. Aug. 31, 2009) at 7 ¶ 16. *Balanced Budget Act Report and Order* at 22769 ¶ 132 n.366, citing 47 C.F.R. § 1.925. See also *Letter to Alan S. Tilles, Esq.*, 22 FCC Rcd 13577, 13581 & n.30 (WTB Mobility Div.) (noting that "[i]n addition to the Section 337 process, [public safety] entities can also seek a conventional waiver under Section 1.925 of rules.").

<sup>51</sup> 47 U.S.C. § 151; see also 47 U.S.C. §§ 154(i), 303(r).

<sup>52</sup> See 47 C.F.R. 1.925 (providing that "[t]he Commission may waive specific requirements of the rules upon its own motion or upon request") (emphasis added). See 47 C.F.R. § 1.925(b)(3)(i)-(ii) (setting forth the criteria).

that Monmouth has presented sufficient information for us to consider whether waiver relief is justified under Section 1.925.

15. Section 1.925 states that to obtain a waiver of the Commission's rules, a petitioner must demonstrate either that: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case, and that a grant of the waiver would be in the public interest;<sup>53</sup> or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.<sup>54</sup> An applicant seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.<sup>55</sup> Based on the information before us, we conclude that a grant of Monmouth's waiver request is warranted under the first prong of the waiver standard. We proceed with analyses of each rule for which Monmouth requests waiver.

16. *Sections 90.303, and 90.305(a)*. Section 90.305(a) requires PLMRS base stations operating in the 470-512 MHz band to be located within 50 miles (80 kilometers) of the geographic centers of urbanized areas listed in Section 90.303.<sup>56</sup> In addition, Section 90.305(b) permits mobile units to operate within 30 miles (48 kilometers) of the associated base station.<sup>57</sup> The Commission established these mileage restrictions to protect over-the-air broadcast operations on TV Channels 14-21 located outside of the designated urbanized areas from harmful interference from PLMRS systems operating in the 470-512 MHz band.<sup>58</sup> In its 2001 *Goosetown* decision, the Commission observed that combining the parameters of Sections 90.305(a) and (b) creates a circular area with an 80-mile (128-kilometer) radius where PLMRS stations may operate on a primary basis.<sup>59</sup> Frequencies in the 500-506 MHz band (TV channel 19) are available for assignment to PLMRS users with base stations within fifty miles of the City of Philadelphia, Pennsylvania center coordinates.<sup>60</sup>

17. The County requires a waiver of Section 90.305 because proposed base station sites are located beyond fifty miles from the Philadelphia, Pennsylvania coordinates. In *Goosetown*, the Commission stated that it would be "more inclined to consider favorably requests for waiver of Section 90.305(a) when the applicant proposes to contain its area of operation within 80 miles of the geographic center of the urban area in question."<sup>61</sup> Such operation, the Commission believed, "would not adversely

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<sup>53</sup> 47 C.F.R. § 1.925(b)(3)(i).

<sup>54</sup> 47 C.F.R. § 1.925(b)(3)(ii).

<sup>55</sup> *WAIT Radio v. FCC*, 413 F.2d 1153, 1157 (D.C. Cir. 1969) (*WAIT Radio*), *aff'd*, 459 F.2d 1203 (1973), *cert. denied*, 409 U.S. 1027 (1972) (citing *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968)); Birach Broad. Corp., *Memorandum Opinion and Order*, 18 FCC Rcd 1414, 1415 (2003).

<sup>56</sup> 47 C.F.R. § 90.305(a).

<sup>57</sup> 47 C.F.R. § 90.305(b).

<sup>58</sup> See Amendment of Parts 2, 89, 91, and 93; geographic reallocation of UHF-TV Channels 14 through 20 to the land mobile radio services for use within the 25 largest urbanized areas of the United States; Petition Filed by the Telecommunications Committee of the National Association of Manufacturers To Permit Use of TV Channels 14 and 15 by Land Mobile Stations in the Los Angeles Area, Docket No. 18261, *First Report and Order*, 23 FCC 2d 325, 342-343 ¶¶ 42, 46 (1970).

<sup>59</sup> See *Goosetown Enterprises, Inc.*, *Memorandum Opinion and Order*, 16 FCC Rcd 12792, 12795 ¶ 9 (2001) (*Goosetown*).

<sup>60</sup> See 47 C.F.R. § 90.303.

<sup>61</sup> *Goosetown*, 16 FCC Rcd at 12797 ¶ 13.

impact television stations because televisions stations are already required to protect land mobile stations operating within that area.”<sup>62</sup> Bureau staff has verified that all of Monmouth’s operations would be contained within 128 kilometers/80 miles of the Philadelphia coordinates, and thus, inside the area where PLMRS stations may operate on a primary basis under *Goosetown*. We also agree with Monmouth’s Reply Comments, which argue that in light of the existing PLMRS usage in this area and on these frequencies, its proposed operations would be “a *de minimis* addition to the current [TV Channel 19] environment.”<sup>63</sup> Monmouth states that “[t]he proposed mobile operations will remain within Monmouth County, the furthest point being 74 miles to the tip of Sandy Hook from the Philadelphia coordinates.”<sup>64</sup> Accordingly, because Monmouth’s proposed operations on the frequencies would be contained within the eighty-mile area where land mobile operations are primary, we conclude that the underlying purpose of Section 90.305 would not be served or would be frustrated by application to the present case.

18. *Section 90.307(a), (c) and (d)*. Monmouth requests waiver of Section 90.307(a) “with regard to the absolute distance values of base stations from protected UHF television stations set forth in Table E” of Section 90.309.<sup>65</sup> Table E sets forth minimum distances between a protected adjacent channel television station and a proposed land mobile base station, depending on power and antenna height.<sup>66</sup> Monmouth requests waiver of Section 90.307(d) “with regard to the minimum distance between a land mobile base station with mobile station and a protected adjacent channel television station,” which is 90 miles or 145 kilometers.<sup>67</sup> The purpose of Sections 90.307(a) and (d) is to protect adjacent channel TV stations from interference caused by PLMRS base stations and mobile units operating in or near the TV station’s coverage area.<sup>68</sup> Monmouth indicates that the center of the county is located 38.6 miles from Station WMBC-DT operating on TV Channel 18,<sup>69</sup> thus necessitating a waiver of Section 90.307(a) and (d) in order for Monmouth to operate on TV Channel 19 band frequencies. As described above, Monmouth has obtained concurrence from WMBC-DT for operation on Channel 19, so long as Monmouth minimizes transmissions toward WMBC-DT broadcast operations.<sup>70</sup> Monmouth agrees to several non-interference conditions and agrees to accept all interference from Station WMBC-DT.<sup>71</sup> In this respect, Monmouth states that “it is proposed that directional antennas be used to limit radiation in the direction of WMBC-DT and better cover the County to the south.”<sup>72</sup> In light of the Monmouth-Mountain Agreement and the conditions contained therein,<sup>73</sup> we conclude that the underlying purpose of Sections 90.307(a) and (d) would not be served or would be frustrated by application to the present case.

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<sup>62</sup> *Id.* See also 47 C.F.R. §§ 73.623(e), 74.709.

<sup>63</sup> Monmouth Reply Comments at 3.

<sup>64</sup> Waiver Request at 13.

<sup>65</sup> Analysis at 9.

<sup>66</sup> See 47 C.F.R. § 90.309 Table E.

<sup>67</sup> Analysis at 9. See 47 C.F.R. § 90.307(d).

<sup>68</sup> See County of Dauphin, Pennsylvania, *Order*, 22 FCC Rcd 8628, 8631 ¶ 10 (PSHSB PD 2007).

<sup>69</sup> See Analysis at 5 Table 1.

<sup>70</sup> See Monmouth-Mountain Agreement.

<sup>71</sup> See *id.* at 2.

<sup>72</sup> Analysis at 8.

<sup>73</sup> See Monmouth-Mountain Agreement at 2. The conditions are as follows: “(a) Monmouth County will have responsibility to cure, at its sole expense, all interference suffered by WMBC-DT’s viewers as a result of Monmouth (continued....)”

19. Next, Monmouth requests waiver of Section 90.307(c) “with regard to the absolute distance values of associated mobile and control stations from protected co and adjacent channel TV stations in Table C” of Section 90.309.<sup>74</sup> Section 90.309 Table C sets forth the minimum distance between a protected co-channel television station and a proposed land mobile base station with associated mobile units, depending on mobile unit power.<sup>75</sup> The distances are designed to provide at least 50 dB protection to the television station.<sup>76</sup> The purpose of the rule is to protect co-channel TV stations from interference caused by PLMRS mobile units operating in or near the TV station’s coverage area. Monmouth’s mobile units would operate at up to 40 watts effective radiated power, and therefore, the corresponding minimum distance is 217 kilometers (135 miles).<sup>77</sup> Monmouth indicates that the center of the county is located 118.2 miles from co-channel Class A Station W19CI, Berwick, PA,<sup>78</sup> thus necessitating a waiver of Section 90.307(c). Bureau staff has determined that Monmouth would provide more than 50 dB protection to Station W19CI because Monmouth’s 24 dBu interfering contours do not overlap W19CI’s 74 dBu service contour. Because Monmouth would provide Station W19CI the intended protection that Section 90.309 Table C is designed to provide, we conclude that the underlying purpose of Sections 90.307(c) would not be served or would be frustrated by application to the present case.

20. *Co-channel and adjacent channel licensees.* Although consideration of other PLMRS public safety licensees is not germane to the waiver criteria, we reviewed Monmouth’s applications to fulfill our due diligence to examine whether Monmouth would cause harmful interference to such entities. We note that Monmouth submitted its applications through a certified frequency coordinator,<sup>79</sup> which is required to recommend “specific frequencies that are available for assignment in accordance with the loading standards and mileage separations ...”<sup>80</sup> Based on this coordination, we are persuaded that Monmouth’s operation would protect co-channel licensees. With respect to adjacent channel licensees, we note that Monmouth proposes 12.5 kHz bandwidth operation on frequencies offset by 12.5 kHz from 25 kHz bandwidth incumbent systems. In 1997, the Commission directed the certified frequency coordinators for the private land mobile radio services to reach a consensus on the applicable coordination procedures for the 12.5 kHz “offset” channels in the 470-512 MHz band.<sup>81</sup> That consensus is embodied in the Land Mobile Communications Council (LMCC) procedures for evaluating adjacent channel

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County’s operations, irrespective of the location from where WMBC-DT’s signal originates; (b) Should Monmouth County be unable to cure such interference, Monmouth County must immediately reduce or terminate its operations, to the extent necessary to cure such interference; (c) Monmouth County must accept all interference from WMBC-DT, irrespective of the location from which WMBC-DT’s signal originates.” *Id.*

<sup>74</sup> Analysis at 9.

<sup>75</sup> See 47 C.F.R. § 90.309 Table C.

<sup>76</sup> See *id.*

<sup>77</sup> See *id.* See also File No. 0003395374.

<sup>78</sup> See Analysis at 5, Table 2.

<sup>79</sup> See File No. 0003395374, Frequency Coordination No. 09YWAP690211965; File No. 0003710492, Frequency Coordination No. 09YWAP680210161.

<sup>80</sup> See 47 C.F.R. § 90.175(e).

<sup>81</sup> See Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Services, PR Docket No. 92-235, *Second Report and Order*, 12 FCC Rcd 14307, 14330-31 ¶ 43 (1997).

interference in the 470-512 MHz band using the interference criteria of TIA/EIA/TSB-88 (TSB-88).<sup>82</sup> The LMCC Consensus provides that an application shall not be certified if an incumbent or the applicant has unacceptable interference of more than five percent reduction of the calculated service area reliability.<sup>83</sup> Monmouth submitted a TSB-88 analysis which determined that neither adjacent stations nor Monmouth itself would receive greater than five percent degradation in service area reliability as a result of Monmouth's proposed operations.<sup>84</sup> Thus, Monmouth's frequency coordinator certified the applications consistent with the LMCC Consensus criteria. Because Monmouth's certified frequency coordination covers both co-channel and adjacent channel licensees, we conclude that Monmouth's proposed operations would not cause harmful interference.

21. *Public Interest.* In addition to finding that the relevant rules would not be undermined by a grant of the waiver request, our analysis under the first prong of the Section 1.925 waiver standard requires a finding that grant of the waiver would be in the public interest.<sup>85</sup> Monmouth states that "grant of the County's applications and request for waiver would enable it to provide effective public safety services to its residents, such as improvements to security and overall incident management and preparedness."<sup>86</sup> Regarding the Commission's narrowbanding mandate, Monmouth asserts that its initiative "establishes a clear path to bring agencies into compliance."<sup>87</sup> Bureau staff has revisited a sampling of Monmouth's licenses and confirmed that Monmouth has modified its licenses with narrowband (11.25 kHz bandwidth) emission designators on frequencies affected by the narrowbanding mandate.<sup>88</sup> Given Monmouth's recent progress to transition to narrowband technology, we find that the public interest supports assigning new spectrum to Monmouth. We find that the proposed system would further the public interest by affording Monmouth's responders and citizens with the necessary spectrum to enable the County to protect the lives and property in its care. Indeed, Section 1 of the Act defines one of the Commission's over-arching purposes as "promoting safety of life and property through the use of radio communication."<sup>89</sup>

22. In addition, we find that grant of Monmouth's waiver request "will promote real interoperable communications among County, Municipal, and State public safety agencies."<sup>90</sup> Notwithstanding the availability of 700 MHz band spectrum, we find it in the public interest to grant use

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<sup>82</sup> See Telecommunications Industry Association/Electronics Industry Association Telecommunications Systems Bulletin 88 (TIA/EIA/TSB-88), *Wireline Communications System – Performance in Noise and Interference-Limited Situations - Recommended Methods for Technology-Independent Modeling, Simulation, and Verification* (January 1998). See also Filing Freeze to Be Lifted for Applications Under Part 90 for 12.5 kHz Offset Channels in the 421-430 and 470-512 MHz Bands, *Public Notice*, 13 FCC Rcd 5942, 5942 (WTB 1997) (citing Letter from Larry A. Miller, President, LMCC, to Daniel B. Phythyon, Esq., Acting Chief, Wireless Telecommunications Bureau (Sept. 10, 1997) (LMCC Consensus)).

<sup>83</sup> See LMCC Consensus, Attachment at 2.

<sup>84</sup> See File No. 00033395374, untitled attachment labeled "PASS FAIL STUDIES" on the Commission's Universal Licensing System.

<sup>85</sup> See 47 C.F.R. § 1.925(b)(3)(i).

<sup>86</sup> Waiver Request at 14.

<sup>87</sup> *Id.* at 12.

<sup>88</sup> See, e.g., license for Station WPTQ656.

<sup>89</sup> 47 U.S.C. § 151.

<sup>90</sup> Waiver Request at 1-2.

of TV Channel 19 spectrum to Monmouth because “[m]unicipal agencies within the County predominantly use the UHF band,” and Monmouth’s proposal would allow “UHF infrastructure and subscriber units to be leveraged.”<sup>91</sup> Based on the totality of these factors, we find it in the public interest to grant a waiver as conditioned in this Order. While our decision to grant Monmouth County’s request in this instance “will improve region wide interoperability significantly,”<sup>92</sup> we strongly urge public safety entities contemplating waivers for TV and other non-public safety spectrum to consider use of the 700 MHz band to promote nationwide interoperability, consistent with the public interest.

#### IV. CONCLUSION

23. Based on the record before us, including the Monmouth-Mountain Agreement, we grant Monmouth’s request for waiver subject to the following special conditions:

(a) Monmouth County will have responsibility to cure, at its sole expense, all interference suffered by WMBC-DT’s viewers as a result of Monmouth County’s operations, irrespective of the location from where WMBC-DT’s signal originates;

(b) Should Monmouth County be unable to cure such interference, Monmouth County must immediately reduce or terminate its operations, to the extent necessary to cure such interference; and

(c) Monmouth County must accept all interference from WMBC-DT, irrespective of the location from which WMBC-DT’s signal originates.

#### V. ORDERING CLAUSES

24. Accordingly, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.925 of the Commission’s rules, 47 C.F.R. § 1.925, the request for waiver associated with the captioned applications filed by the County of Monmouth, New Jersey, on January 25, 2009, IS GRANTED, subject to the conditions specified herein, and File Nos. 0003710492 and 0003395374 SHALL BE PROCESSED consistent with this *Order* and the Commission’s rules.

25. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission’s rules, 47 C.F.R. §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Beers  
Chief, Policy Division  
Public Safety and Homeland Security Bureau

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<sup>91</sup> Reply Comments at 5.

<sup>92</sup> Waiver Request at 14.